IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 32181 of 2006(F)

AGAINST THE ORDER IN IA 1837/2006 IN
OS.173/2002 of MUNSIFF COURT,ALUVA

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PETITIONER: PETITIONER/PLAINTIFF:

JOSE JOSEPH, S/O.JOSEPH, AGED 45,
MANAGER, CHRISTHAVA MAHILALAYAM SCHOOL,
THOTTUMUGHAM, ALUVA EAST VILLAGE.

BY ADV. SRI.WILSON URMESE
SRI.M.C.ANTONY

RESPONDENTS: RESPONDENTS/DEFENDANTS:

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1. KOYAKUTTY, S/O.SAIDU, AGED 47,
DABANI MANZIL, KUZHIPPURATHU,
THOTTUMUGHAM, ALUVA EAST VILLAGE (EXPIRED).

2. K.A.JOSEPH, S/O.PAPPU, AGED 56,
KANNAMPUZHA HOUSE, THOTTUMUGHAM,
ALUVA EAST VILLAGE.

BY ADV. SRI.P.K.NISHAD (PUZHITHARA)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

Ext.P1:- True copy of the order dated 25.9.2006 in I.A.1837/06 in O.S.No.173/2002 on the file of the Munsiff Court, Aluva.

/true copy/

P.S. To Judge

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.32181 OF 2006

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Dated this the 5th day of January,2007

JUDGMENT

Petitioner is the plaintiff. Second respondent is the second defendant. First respondent is the deceased first defendant. On the death of first defendant, his legal heirs were not impleaded within the period. Plaintiff then filed I.A.1814/06 for impleading the legal representatives and I.A.1813/06 to condone the delay and I.A.1837/06 to set aside the abatement. Under Ext.P1 order learned Munsiff dismissed the applications. It is challenged in this petition filed under Article 227 of the Constitution of India. In this petition also, deceased first defendant is shown as first respondent.

2. Learned counsel appearing for the petitioner and the respondents were heard.

3. When one of the defendants in a suit dies and a petition is filed to implead the legal heirs,

notice must be sent to the proposed legal representatives in the application as it is for them to say whether the suit as against them is abated or not. It is more so when the impleading application was not filed within the period and applications are filed to set aside the abatement as well as to condone the delay in filing the application. Unfortunately learned Munsiff did not direct notice to be served on the proposed legal heirs before disposing the applications. It is for the legal heirs to contend whether the suit as against them is abated due to the death of first defendant and for the failure to implead them within the period provided under the Code. In such circumstances, Ext.P1 order is quashed. Learned Munsiff is directed to issue notice to the proposed legal heirs of the first respondent and pass appropriate order after affording an opportunity to the legal heirs, to file objection to the applications.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006